

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	CASE NUMBER: 1:06-CR-47-TS-3
)	
DEMETRIUS S. WRIGHT)	

OPINION AND ORDER

This matter is before the Court on the Defendant's Motion to Be Provided with Copies of Documents and Transcripts Relative to This Matter with Costs and Fees Waived [DE 126], filed on January 29, 2009. For the following reasons, the Defendant's Motion is granted in part and denied in part.

BACKGROUND

On March 5, 2007, the Defendant entered a plea of guilty to the offense charged against him in the Indictment [DE 28]. The Indictment charged that the Defendant, by force, violence, or intimidation, took from the person or presence of another money belonging to or in the care, custody, control, management, or possession of Farmers and Merchants Bank at 1615 West Gump Road in Huntertown, Indiana, whose deposits were then insured by the Federal Deposit Insurance Corporation (FDIC), in violation of 18 U.S.C. §§ 2113(a) & 2. On February 4, 2008, a sentencing hearing was held, and the Defendant was sentenced to a term of 151 months imprisonment. The Defendant did not file a notice of appeal.

ANALYSIS

On January 29, 2009, the Defendant filed a *pro se* Motion to Be Provided with Copies of

Documents and Transcripts Relative to This Matter with Costs and Fees Waived. In his Motion, the Defendant requests several documents and transcripts: the Indictment [DE 28]; the first Plea Agreement [DE 51]; the second Plea Agreement [DE 64]; a copy of the transcript of his March 5, 2006, change of plea hearing; and a copy of the transcript of his February 4, 2008, sentencing hearing. The Defendant states that “these documents are necessary to enable [him] to meaningfully assess whether or not there is a viable basis to seek collateral relief under 28 U.S.C. § 2255.” He states that he is unable to pay any costs or fees associated with his request, and thus his request is that these materials be provided free of cost. On January 29, the Defendant also submitted a letter making the same request as in the Motion.

Because the Defendant did not appeal his conviction or sentence, no transcripts have been prepared in this case, and thus those materials are not contained in the Court’s files. Section 753(f) of Title 28 of the United States Code allows an indigent defendant to obtain the preparation of free transcripts to prosecute a § 2255 action, “if the trial judge . . . certifies that the suit . . . is not frivolous and that the transcript is needed to decide the issue presented by the suit.” 28 U.S.C. § 753(f); *see also United States v. Crawford*, No. 07-CR-20106, 2008 WL 4426093, at *1 (C.D. Ill. Sept. 26, 2008). Before the Defendant can obtain preparation of transcripts under § 753(f), he must first file the Section 2255 action.” *Crawford*, 2008 WL 4426093, at *1; *see also United States v. Tolliver*, No. 04-CR-40014, 2007 WL 611236, at *1 (S.D. Ill. Feb. 26, 2007) (stating that Section 753(f) applies when the transcript is needed to decide an issue presented by a pending and non-frivolous action). Because the Defendant has not yet filed a Section 2255 motion, he is not eligible for transcripts under § 753(f). *Crawford*, 2008 WL 4426093, at *1. In the event the Defendant does properly and timely file a § 2255 motion

and makes the necessary showings of indigence and non-frivolousness, the Court may be petitioned for discovery under Rule 6 of the Rules Governing Section 2255 Proceedings and for preparation of transcripts under § 753(f). The Court will, therefore, deny the Defendant's Motion as to the transcripts of his change of plea hearing and his sentencing hearing.

The Defendant requests three documents that are in the Court's file: the Indictment [DE 28]; the first Plea Agreement [DE 51]; and the second Plea Agreement [DE 64]. The Court will grant his Motion as to these documents and direct the Clerk to send the Defendant copies of these three documents. *See United States v. Ellis*, No. 06-CR-33, 2008 WL 2705586, at *2 (E.D. Wis. July 8, 2008).

CONCLUSION

For the foregoing reasons, the Court now GRANTS IN PART and DENIES IN PART the Defendant's Motion to Be Provided with Copies of Documents and Transcripts Relative to This Matter with Costs and Fees Waived [DE 126]. The Court DIRECTS the Clerk to send the Defendant copies of the following three documents: the Indictment [DE 28]; the first Plea Agreement [DE 51]; and the second Plea Agreement [DE 64].

SO ORDERED on February 6, 2009.

s/ Theresa L. Springmann
THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT